



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
33 SOUTH KING STREET, 6TH FLOOR  
HONOLULU, HAWAII 96813

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
DIVISION  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

# AGENDA

## MOLOKAI ISLAND BURIAL COUNCIL MEETING

Date: Wednesday, May 17, 1995  
Time: 1:00 a.m.  
Place: Queen Lili'uokalani Children's Center  
Lili'uokalani Trust  
Kalamaula, Molokai

### I. OPENING REMARKS

### II. APPROVAL OF MARCH 24, 1994 MEETING MINUTES

### III. BUSINESS

- A. **Case Updates and Inadvertent Discoveries**  
**Information/Recommendation:** discussion of status of ongoing cases, proposed follow up by SHPD and notification of recent inadvertent discoveries of human skeletal remains.
- B. **Administrative Rules for Burial Sites Program**  
**Information:** update of promulgation

### IV. ANNOUNCEMENTS

### V. ADJOURNMENT

1995 MAY 17 12 06 PM '95



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# MINUTES

## MOLOKAI ISLAND BURIAL COUNCIL MEETING

Date: Wednesday, May 17, 1995  
Time: 1:00 p.m.  
Place: Queen Lili'uokalani Children's Center  
Lili'uokalani Trust  
Kalamaula, Molokai

### ATTENDANCE:

Council: William Akutagawa Jr.  
Henry Ayau Jr.  
Anna Goodhue  
Lawrence Aki  
Noelani Meyer Keliikipi

Staff: Edward Halealoha Ayau, Burials Director

### ABSENT:

Pearl Hodgins	Randy Fujimori
Lani Kapuni	Gloria Marks

### GUESTS:

### I. OPENING REMARKS:

Chairperson William Akutagawa called the meeting to order at 1:20 p.m. and offered the *pule wehe* (opening prayer).

## II. APPROVAL OF MARCH 29, 1994 MEETING MINUTES:

- 1) Correct last name of Rachael Kamakana.

The Molokai Island Burial Council meeting minutes of March 29, 1994 was unanimously accepted as amended. (Ayau/Aki)

Vote: all in favor

## III. BUSINESS:

### A. Case Updates and Inadvertent Discoveries

**Information/Recommendation:** discussion of status of ongoing cases, proposed follow up by SHPD and notification of recent inadvertent discoveries of human skeletal remains.

Eddie Ayau thanked the council members for attending the meeting to work on these issues. He explained when a landowner wants to develop his property and there are burials known to be there, the council has the legal authority to decide whether the burial stays in place or is to be relocated. If the owner does not know the remains are there and either when they are doing some kind of work on the property or by natural erosion, the burials are discovered, the law refers to those as inadvertent discoveries and SHPD has the jurisdiction to decide whether to leave them in place or relocate them.

#### 1) KALUA KO'I

Ayau said this was natural erosion and is classified as an inadvertent discovery. The department decides its treatment in consultation with the burial council, any lineal descendants who come forward or any Hawaiian organizations who are concerned about the grave. Ayau said on March 6, 1995, DOCARE officer Keith Shiroma called SHPD and reported that remains were found in Kalua Ko'i, close to the previous one found in Kalua Ko'i. He said the hotel dumps rubbish there and is a sand dune area covered with vegetation but erosion still continues on the sand banks.

Akutagawa said Sara Collins who is the Moloka'i Island archaeologist from Honolulu came to do a site survey and sift through the sand to recover the remains with Lawrence Aki and himself. He explained that a chunk of sand eroded from the bank and scattered the remains. Akutagawa said the remains were kept in his office until he was able to give them to DOCARE. He said Collins was unable to complete the job and was supposed to have come back but did not come back

for quite some time. He said she came back on April 6 to do the excavation by herself, collected the remains that were there and took them to the DOCARE office.

Lawrence Aki said there was not enough time to complete the excavation and Collins said she would ask for some assistance and would return. He notified Danny Mateo that he was going to monitor the area once a week. Aki said 2 weeks later there were heavy rains and when he went to check, he found more remains about 50 feet from where the remains were. He said he marked the spot, collected the remains, and took them to DOCARE.

Akutagawa said Collins asked if she should dig into the mound and he advised her not to dig but only to excavate what could be seen. He felt that digging might uncover more and said it might be worse. Akutagawa said it looks like the bank was cut away when they made the rubbish dump area. He commented that the rain will continually erode the bank if it isn't shored up.

Aki said according to Danny Mateo there is an interest on the part of the hotel not to use that particular area for development and to plant grass and trees and leave the area alone. He said Mateo's recommendation is not to move the burial but he is not the property owner. Aki suggested that the burial council or SHPD push Mateo in that direction and come up with a preservation plan and to follow up with Mateo.

**Motion for DLNR to follow up with Danny Mateo to protect the area from erosion and to monitor the area. (Aki/Ayau)**

**Vote: all in favor.**

Akutagawa announced that the ceremony to reinter the iwi is at 6:30 tonight. He said the area is prepared and everything is ready to go. Akutagawa said Auntie Lani Kapuni said she did not want to get involved in the reburial ritual because she felt that they should be put in a Christian cemetery. He said he still liked the concept to honor them by keeping them where they were buried because they were there before and that they should go back to the same place. He also said because it's not known whether the remains are complete, we don't want to take the chance and have problems later.

## **2) MO'OMOMI**

Ayau stated that he belongs to an organization called Hui Mālama I Nā Kūpuna O Hawai'i Nei started by Auntie Pua

Kanahele and her husband Edward. He said this group was created to take care of ancestral remains and burial sites and to travel to museums around the country to bring them home. Ayau said the Natural History Museum of Los Angeles County has 37 teeth that was taken from remains that were removed from Keonelele. He explained that these remains were removed by Dr. Emery of the Bishop Museum and taken to the Los Angeles Museum by William Brian who was then the director of the museum. Ayau explained that he will be on a trip at the end of the month to bring home iwi from three museums and will then have them transferred to Moloka'i for reburial. He said these are the last three museums they know of in the United States.

### 3) MAPULEHU GLASS HOUSE

Ayau said this burial disturbance occurred in an acre lot and has a permanent easement attached to this lot. He said all of the remains were reburied which was estimated at approximately 60 individuals. He said the State initiated enforcement proceedings against the lessee, Ellen Osborne and explained that it's taken long because the State attorney general's office wanted to work out a settlement with her but that she rejected all three offers. He said she is in violation of Chapter 6E, Section 11 (b) and the civil trial is set for the week of July 3rd in Maui. Ayau said the State was willing to settle for \$120,000 in fines but by declining the settlements, she now faces fines up to \$600,000. He read Section 11:

(b) It shall be unlawful for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

Ayau explained that Osborne is being prosecuted because she knowingly excavated, injured, destroyed and altered burial sites.

(c) Any person who violates this section shall be fined not more than \$10,000 for each separate offense.

Ayau said if it can be established that there were 60 burials x \$10,000 the amount would be \$600,000. The department didn't want to put Osborne through all this but she chose not to settle. Ayau said as of 1992, after she did this, the law was changed to be a criminal violation because the department thought that people would be willing

to pay a fine but won't want to go to jail. He said now it's a misdemeanor to disturb a burial and can get up to 6 months in jail.

**B. Administrative Rules for Burial Sites Program**  
**Information: update of promulgation**

Ayau said one of the things he wanted to do before the rules came out for public hearing was to go to each island and meet with the councils and community groups to explain what it all meant but because of the budget shortfall, the State cut off all travel unless the council was making a decision on a matter. He explained that when documents like this is written, it is difficult for the lay person to read but that it has to be written that way to make sure that things are precise. Ayau said the burial rules was based on Hawaiian values in terms of dealing with the *iwi* and principally, the number one value is that this is a family matter. Ayau explained that if the families were able to establish descents from the remains that it's their decision how these remains should be treated.

Ayau said one of the issues that came out was the issue of physical examination. He said initially before this law passed in 1990, the law required physical examination whenever *iwi* was found and the only time it couldn't be studied is if there were descendants that came forward and said no. Ayau said one of the first things he did was to get the law repealed because in Hawaiian thought to handle someone else's family bones without their permission was *hewa*. He said just to come to terms with all of the issues, it took 4 years to draft the proposed rules. He said 2 meetings were held in Oahu with all of the council chairs to tighten up the rules and despite that there were disagreements within the department over the rules.

Ayau explained that by the time the rules went out, there was a protest lodged by the department's own staff archaeologist because the rules said allow very limited study. He said the reason is because it is known that there are non Hawaiians buried and in cases it not known for sure, then the ethnic group needs to be contacted and given their right to conduct their own ceremonies. Ayau said it was clearly felt that the majority of the burials that would be found will be Hawaiian and that only limited studies be allowed when there is reason to believe that the remains may not be Hawaiian. If the remains were found by itself, that doesn't mean it would be assumed automatically that they are not Hawaiian and that it must be studied. Ayau said his view is that it should be presumed that they are Hawaiian

unless you can demonstrate otherwise but the archaeological profession deals with gathering information and to them it's not a good thing. He said they also felt from a landowner's prospective that it was undue burden on the landowner because they have to pay for all this. Ayau said the law was written to address Hawaiian cultural concerns and to balance private landowner's interest which means that it shouldn't cost the landowner a lot of money.

Ayau said a total of 110 people submitted testimonies on the issue of physical examination and out of that 54 said leave the rules the way they are or delete the section entirely and 13 said do more studies.

Ayau said the other issue was photography and the only people that can consent to the photography of Hawaiian bones is the family.

The other issue was *hāna'i* which was not included in the rules. Ayau did not care for the fact that they [archaeologists] assumed that it was just ignored. He said there was a misunderstanding on the definition of *hāna'i*, in which the archaeologist's felt that *hāna'i* is anyone who stays with someone older than them and are part of the family. Ayau said in traditional Hawaiian culture, *hāna'i* is when you are given at birth, to someone else and they care for you. He said when you're older and can care for yourself and given to another family, it is called *ho'okama*. Ayau said the rules say that lineal descendants is someone who can show that they are descendants from these *iwi*. He said Hawaiians practice *hāna'i* within their own families and qualifies as a lineal descendant. If a child was given to somebody outside of the family but that family lived in the same area, the rules provide that if you cannot demonstrate that you are descendants from these remains, but you can show your family from the area, you're a cultural descendent because you can show that you are from the same area where the *iwi* is from. Ayau said if *hāna'i* was included in the rules, then all the other Hawaiian relationships had to be included because in making these rules when it is stated specifically, it limits the other options but if it is generally stated, then it can be expanded.

Ayau said the final arguments were submitted to Mike Wilson, who reviewed the rules and are now with the attorney general's office. He said he didn't think it would be ready for the May DLNR board meeting but was hopeful that it would be ready for a vote in the June meeting. If they vote to accept them, it would be transmitted to the Governor's office, 10 days after he receives it, whether he signs it or not, it becomes law.

Ayau commented that the most intense opposition came from the archaeologist and stated that it was interesting because when the law was being passed, not one archaeologist testified. He said the only 2 entities that were hashing out this issue was the landowners and developers and the Hawaiians. He said in meetings held with the landowners they felt the rules were fair and felt that by limiting all these activities, it wasn't going to cost them a lot of money. Ayau was hopeful that the rules would be in place by June and is hoping to pass them out to all the council members and possibly hold meetings to explain the legal language. The protection that these rules would provide is if someone decides to challenge the decision of the council.

#### **IV. ANNOUNCEMENTS**

Ayau announced that the department was notified by Bishop Museum that they have an internship program and that the requirement is to be half Hawaiian and be interested in working in a museum to work with Hawaiian objects, either a college degree or comparable life work experience. This person would be able to travel to another country to work in another museum for a month. The salary is \$17,500 a year and includes medical benefits. Ayau felt it was a good opportunity because one thing that is going to be happening is that Hawaiian objects are going to be returned from the United States museums soon.

Akutagawa said for the April 6 Archaeology Meeting, there were many haoles who were interested in archaeology. Noelani Keliipiki said at the museum they are setting up archaeological forums dealing with Moloka'i during the months of July, August and October.

There was a brief discussion about Galagher property in which there may be violations of some Federal and State laws in regards to disturbance of burial sites when fill material was brought in and covered wetland area. Ayau said this has not been resolved yet.

#### **KALAUPAPA**

Ayau said the council was notified about burials by National Park Service although the council has no jurisdiction over the burials because it's governed by the Federal law.



Ayau explained about the council membership that the law requires that there should be a minimum and maximum ratio of representatives of landowners and community representatives. He said the law requires that for every 1 landowner representative, there has to be a minimum of 2 Hawaiians community representatives, a maximum of 3. He said since the Molokai council couldn't meet the ratio because there weren't enough landowners, a Bishop Estate landowner representative was included this year from Honolulu.

**VII. ADJOURNMENT:**

The meeting was moved and unanimously approved to be adjourned by Henry Ayau and seconded by Aki at 2:30 p.m. with a *pule pani* by Noelani Keliikipi.

Respectfully submitted,

A handwritten signature in cursive script, reading "Barbara Kameda".

Barbara Kameda